

# EXHIBIT 4a

INGBER & GELBER, LLP

COUNSELLORS AT LAW

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OF COUNSEL

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STEVEN P. LOMBARDI

MARTIN GELBER

(1944-2008)

\*MEMBER NJ & NY BAR

\*\*MEMBER NJ & FL BAR

November 6, 2007

VIA FEDERAL EXPRESS

Honorable Judge Louis L. Stanton, U.S.D.J.  
Chamber of Judge Stanton  
U.S. Southern District Court of New York  
500 Pearl Street  
New York, NY 10007

RE: Re: Lyons Partnership, L.P., et al v. Party Art  
Productions, Inc., Roberta Herman, Philip Herman, Magic  
Agency, Inc. and Carol Shelley Carroll, et al; S.D.N.Y,  
Civil No. 07-7121 (Judge Stanton)

Dear Judge Stanton:

We are counsel to the above named Defendants.

Pursuant to our conversation with your Clerk, Sam Enzer,  
today, and further to our letter to you dated November 5, 2007, we  
are providing the Court with the attached courtesy copies of the  
following documents which had originally been presented to  
Plaintiffs on October 19, 2007:

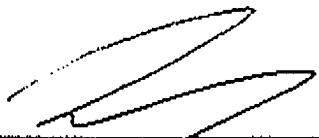
- (1) Notice of Motion for Sanctions and Disqualification;
- (2) Memorandum of Law;
- (3) Affidavit of Counsel and attached exhibits;
- (4) Affidavit of Roberta Herman; and
- (5) Proposed form of Order for Sanctions.

Pursuant to FRCP 11(c)(1)(A), Plaintiffs have until November  
9, 2007 to withdraw their claims against Party Art, The Magic  
Agency, Roberta Herman, Philip Herman and Carol Shelley. We look  
forward to meeting with Your Honor on November 9, 2007 for the  
Initial Conference and for the Rule 11 and Disqualification pre-

motion conference.

Respectfully submitted,

INGBER & GELBER, LLP

  
By: Mark S. Ingber

Encl.

cc: Gary Adelman, Esq., w/encl. (Via Email)  
Brian Greenfield, Esq., w/encl. (Via Email)  
Michael Pinnisi, Esq., w/encl. (Via Email)  
Toby Butterfield, Esq., w/encl. (Via Email)

MI:lb

LETTER TO JUDGE STANTON CONCERNING INITIAL CONFERENCE AND RULE 11.wpd

**COWAN, DEBAETS, ABRAHAMS & SHEPPARD LLP**  
ATTORNEYS AT LAW

April 26, 2006

Party Art Productions  
51 Brandt Road  
Hillburn, NY 10931

Re: Scholastic Inc., and HIT Entertainment, Inc. v. Party Art Productions, Inc.,  
and Philip Herman and Roberta Herman

Dear Mr. and Ms. Herman:

This law firm represents Scholastic Inc., and HIT Entertainment, Inc. (collectively, "Plaintiffs"). Plaintiffs are the owners or exclusive licensees of all copyrights and trademark rights in the popular children's characters Clifford the Big Red Dog<sup>®</sup> and Bob the Builder<sup>™</sup>. Plaintiffs exploit these characters in numerous products and services worldwide, including television broadcasts and children's toys.

\* Plaintiffs have determined that you have been distributing knock-off costumes or using them to provide entertainment services to children and adults. This activity is a direct violation of Plaintiffs' exclusive rights, the Lanham Act (the Federal Trademark Act), the Copyright Act, and common law.

Plaintiffs will not tolerate costume infringement. Plaintiffs do not manufacture or license adult costumes of the genuine Clifford the Big Red Dog<sup>®</sup> and Bob the Builder<sup>™</sup> characters for such use. In view of your infringing conduct, Plaintiffs have instructed this law firm to file suit against you and your business. Copies of the Complaints naming you and your business as defendants in the lawsuits are attached hereto as Exhibit "A". If the Complaints are filed against you, Plaintiffs will seek substantial money damages from you. For example, pursuant to the Lanham Act, Plaintiffs may be entitled to triple damages for your willful infringement of its trademark rights, as well as full attorneys' fees and costs. Likewise, to the extent a court finds that your infringement of Plaintiffs' copyrights in the characters is willful, Plaintiffs may be awarded damages of up to \$150,000 per work infringed.

This letter and the attached documents provide the information you need to understand the lawsuit which may be filed against you and your business, as well as the documents required to settle this dispute before the lawsuit is filed. If you promptly take the steps outlined in the attached settlement package, your settlement amount will be \$60,000.

We strongly urge you to immediately consult an attorney experienced in trademark and copyright law to help you review this settlement package. You may also wish to  
41 MADISON AVENUE - 34<sup>TH</sup> FLOOR, NEW YORK, NEW YORK 10017  
TEL: (212) 497-0997 FAX: (212) 974-8474

COWAN, DEBAETS, ABRAHAM & SHEPPARD LLP

Party Art Productions, Inc.  
April 26, 2006  
Page 2

discuss this letter with your insurance carrier. The Complaint(s) naming you and your business as defendants will be filed if you or your attorney fails to contact us within 10 days of the date of this letter.

If you want to settle this matter without having to go to court you must agree to:

1. **STOP** the manufacture, sale, distribution, rental, performance, advertising and/or marketing of any costume of any of Plaintiffs' characters;
2. **SURRENDER** all infringing costumes in your possession or control. Arrangements for shipment are in the attached instruction sheet (Exhibit B);
3. **PAY** \$60,000 by cashier's check or other good funds. Checks should be made payable to "Cowan, DeBaets, Abrahams & Sheppard LLP in Trust for Costume Litigation" and mailed to this office;
4. **ANSWER** certain questions about your infringing activities, as well as turn over all relevant supporting documentation; and
5. **SIGN** the attached Settlement Agreements which bar you from future infringement of Plaintiffs' rights.

Instructions for settlement and for completing the documents you need to fill out are contained in the yellow packet included with this letter. Again, we strongly recommend that you consult with an attorney and carefully review these materials.

Upon satisfactory completion of these terms, Plaintiffs will execute and mail to you within ten (10) working days its portion of the Settlement Agreement, including full releases from liability. If all terms are not met (or we have not heard from you) within ten (10) days from the date of this letter, this office will be forced to take legal action against you. Once

COWAN, DEBAETS, ABRAHAMS & SHEPPARD LLP

Party Art Productions, Inc.  
April 26, 2006  
Page 3

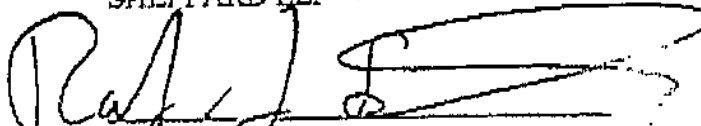
the Complaints have been filed, Plaintiffs will seek damages substantially greater than the settlement amount sought today.

If you have any questions after reviewing the yellow settlement packet, you may contact our costume litigation group at 212-497-0997.

Under federal law, any person given notice of a potential lawsuit is forbidden to destroy, move, or hide evidence in their possession or control. If such spoliation of evidence is established in court, a finding of contempt or a damage award will result.

The portions of this letter describing settlement are subject to the confidentiality provisions of Federal Rule of Evidence 408. Additionally, nothing herein shall limit or be construed to limit any claim, right or remedy that our clients may have, all of which are expressly reserved.

Sincerely,  
COWAN, DEBAETS, ABRAHAMS &  
SHEPPARD LLP

  
Ralph J. Sutton

Attorneys for Plaintiffs Scholastic Inc., and HIT  
Entertainment, Inc.

RJS/mw  
Encls.



## INSTRUCTIONS FOR SETTLEMENT

If you want to settle this matter without having to go to court, follow the instructions below.

If we have not received your settlement materials (Costumes, Payment, completed Questionnaire and signed Settlement Agreements), or otherwise heard from you or your attorney by 10 days from the date of the demand letter, the Complaints naming you and your business as defendants in the lawsuit will be filed.

We urge you to submit this settlement package to an experienced lawyer for review. After the Complaints have been filed, Plaintiffs will seek damages far greater than the amount we require today.

**STEP 1. SURRENDER** all infringing costumes in your possession or control to Cowan, DeBacis, Abrahams & Sheppard LLP. Use the enclosed Shipping Form.

- Fill out one copy of the attached Shipping Form for each box of costumes you are sending to HIF and enclose it inside the box.
- Ship the box(es) to:

Cowan, DeBacis, Abrahams & Sheppard LLP  
Attn: Costume Litigation  
41 Madison Ave., 34<sup>th</sup> Floor  
New York, NY 10010

- Do not place any documents from Steps 2-4 in the box(es).

**STEP 2. PAY** the settlement amount by cashier's check or money order, as described.

- Your payment should be made out to "Cowan, DeBacis, Abrahams & Sheppard LLP, In Trust For Costume Litigation."

**STEP 3. ANSWER** certain questions about the costumes you purchased.

- Fill out all of the information on the attached Questionnaire.

**STEP 4. SIGN** two copies of the Settlement Agreement, under which you promise not to infringe the rights of Plaintiffs in the future.

- Read the attached Settlement Agreement carefully and sign both copies of it.
- Send both signed copies of the Settlement Agreement to Cowan, DeBacis, Abrahams & Sheppard LLP in the enclosed, pre-addressed envelope, together with your settlement payment and Questionnaire. (One copy of the Settlement Agreement will be returned to you when signed on behalf of Plaintiffs).

If you have questions, you may call Cowan, DeBacis, Abrahams & Sheppard LLP at (212) 497-0997.

**PROCEED TO NEXT PAGE**

Cowan, DeBacs, Abrahams & Sheppard LLP

Attn: Costume Litigation

41 Madison Avenue, 34th Floor

New York, New York 10010

3. No Other Sums. No other or additional sums of any kind or amount, including but not limited to, damages, attorneys fees, costs, expert witness fees, expert consultant fees, investigation costs or fees are owed to Plaintiffs by Company or to Company by Plaintiffs.

4. Cooperation. Company shall cooperate in good faith with Plaintiffs in connection with any investigation of or litigation regarding possible infringing activities of other individuals and entities, including, but not limited to, consulting with Plaintiffs' counsel or investigators and appearing for deposition or trial testimony on reasonable notice without subpoena.

5. Notice of Contact. Company shall notify Plaintiffs of the fact and content of any conversation, contact or other communication Company may receive concerning the possible sale, production, distribution or importation of merchandise which might infringe Plaintiffs' trademark and copyright rights. This notice, and the notice required by Paragraph 6 of this Settlement Agreement, should be made to:

Cowan, DeBacs, Abrahams & Sheppard LLP

Costume Litigation

41 Madison Avenue, 34th Floor

New York, New York 10010

6. Agreement Not to Infringe. Company agrees to refrain from the purchase, manufacture, distribution, sale, rental and/or use of any costumes or other items which bear the likeness of the Protected Character or a confusingly similar likeness, and shall notify Plaintiffs if requested by any person or entity to engage in any such activity at any time in the future.

7. Plaintiffs Release. For and in consideration of the terms and conditions hereof, including, without limitation Company's ongoing cooperation with Plaintiffs as set forth above, and full payment to Plaintiffs as provided above, Plaintiffs, on behalf of themselves, their partners, representatives, agents, attorneys, employees, successors, affiliates, employers, heirs and assigns, and each of them, hereby releases and forever discharges Company, and its past, present and future officers, directors, employees, employers, attorneys, partners, agents, heirs, beneficiaries, subsidiary, successor or predecessor corporations or partnerships, their assigns, and each of them, of and from any and all claims, demands, allegations, obligations, costs, damages, fees or causes of action of any nature whatsoever, relating to Company's purchase and resale, rental or use of the Allegedly Infringing Costumes, through the date set forth below, but only to the extent of Company's representations and warranties set forth herein. This release does not extend to any customer or supplier of Company, or any officers, directors, or shareholders thereof.



8. **Company's Release.** Company, on behalf of itself, its partners, representatives, agents, attorneys, employees, successors, affiliates, employers, heirs and assigns, and each of them, hereby releases and forever discharges Plaintiffs and their past, present and future officers, directors, employees, employers, attorneys, partners, agents, heirs, beneficiaries, subsidiary, successor or predecessor corporations or partnerships, their affiliates, their assigns, and each of them, of and from any and all claims, demands, allegations, obligations, costs, damages, fees or causes of action of any nature whatsoever relating to the purchases of Allegedly Infringing Costumes from any source, through the date set forth below.

9. **Unknown Claims.** Plaintiffs and Company expressly declare that they knowingly waive any and all rights they may have under the provisions of Section 1542 of the California Civil Code and any comparable federal or state statute or rule of law by releasing all claims, known or unknown, except as otherwise expressly provided herein. Section 1542 of the California Civil Code provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

10. **Attorneys' Fees and Costs.** In the event it is necessary for Plaintiffs to take action to enforce the terms of this Agreement, Company agrees that, in addition to any actual damages incurred, they shall recover from Company the costs and expenses, including reasonable attorneys fees, incurred in connection with such action.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with reference to the subject matter contained herein, and all prior negotiations and understandings between the parties are merged into this Agreement.

12. **Modification or Amendments.** This Agreement may not be altered, modified, amended or changed in any respect or particular whatsoever, except by a writing duly executed by the parties hereto.

13. **Interpretation of Agreement.** The validity, interpretation and performance of this Agreement shall be controlled by, and construed under the laws of the State of New York, excluding any body of law governing conflicts of law.

14. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable for any reason whatsoever, the remaining provisions hereof shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

15. **No Waiver.** The waiver by any party of the performance of any covenant, condition, promise or representation shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, promise or representation.

16. Additional Performance. The parties agree to execute and deliver such other and further documents and to perform such other acts as shall be reasonably necessary to effectuate the purposes of this Agreement.



### STEP 1 - SHIPPING FORM

Complete and enclose one copy of this form in every box shipped to Cowan, DeBatts, Abrahams & Sheppard LLP.

TO:

FROM:

Cowan, DeBatts, Abrahams & Sheppard LLP  
 Attn: Costume Litigation  
 41 Madison Ave., 34th Floor  
 New York, NY 10010

Party Art Productions  
 51 Brandt Road  
 Walburn, NY 10931

I am shipping a total of        boxes. This box contains:

Look-alike costume	Heads (number in this box)	Bodies (number in this box)	Feet (number in this box)	Hands (number in this box)	Other (describe below) (number in this box)
Barney					
Baby Bop					
Bob					
Bob The Builder					
Clifford the Big Red Dog					
Thomas the Tank Engine					
Thomas the Conductor					

If you used the "other" above, use this space to say what other parts you are shipping in this box:

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**DO NOT ENCLOSE** your Questionnaire, Settlement Payment or Settlement Agreement with the look-alike costumes.

**PROCEED TO STEP 2**

## STEP 2 - SETTLEMENT PAYMENT

To settle this dispute without having to go to court, you must pay the settlement amount indicated in the demand letter, \$60,000.

Make your cashier's check or money order payable to:

Cowan, DeBaets, Abrahams & Sheppard LLP, In Trust For Costume Litigation

Use the enclosed pre-addressed envelope to send your Settlement Payment (Step 2) with your completed Questionnaire (Step 3) and both copies of the signed Settlement Agreement (Step 4) to:

Cowan, DeBaets, Abrahams & Sheppard LLP  
Attn: Costume Litigation  
41 Madison Avenue, 34th Floor  
New York, New York 10017

**PROCEED TO STEP 3**



# RELEASE AND SETTLEMENT AGREEMENT

This RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is made and entered into effective as of the date last set forth below, by and between HIT Entertainment, Inc., Scholastic Inc. and Party Art Production, Inc. and Philip Herman and Roberta Herman ("Plaintiffs").

WHEREAS, Plaintiffs are the owners and exclusive licensees of various copyright and trademark registrations and other intellectual property rights pertaining to Bob the Builder<sup>®</sup>, and Clifford the Big Red Dog<sup>®</sup> children's characters (hereinafter "the Protected Characters"); and

10931: WHEREAS, Company has a place of business at 51 Brandt Road, Hillburn, NY

WHEREAS, Company has purchased costumes which allegedly infringe Plaintiff's rights in the Protected Character (the "Allegedly Infringing Costumes") and has resold, rented, or otherwise provided services making use of the Allegedly Infringing Costumes;

WHEREAS, Plaintiffs have made known to Company their intent to file a trademark and copyright infringement suit against Company in a United States District Court, relating to its purchases and sales, rentals or other uses of the Allegedly-Infringing Costumes;

WHEREAS, Company has made certain representations to Plaintiffs, including an accounting of all Allegedly Infringing Costumes purchased by Company from any source;

WHEREAS, Company has surrendered to Plaintiffs all Allegedly Infringing Costumes and costumes which Plaintiffs has informed Company allegedly infringe the rights of Plaintiffs in the Protected Character; and

WHEREAS, Plaintiffs and Company desire to settle the controversies between them without the expense or inconvenience of litigation.

NOW, THEREFORE, in consideration of these premises, and the conditions, covenants and promises set forth herein, Plaintiffs and Company hereby agree as follows:

I. **Inducement to Settle.** Company represents that the information it has provided to Plaintiffs in the Questionnaire provided to it by Plaintiffs is, and all representations made by it to Plaintiffs are, accurate and complete to the best of its knowledge following reasonable inquiry. Company acknowledges and agrees that such information and representations are a material part of the inducement to Plaintiffs to enter into this Agreement and that any false or misleading representations or information shall constitute a material breach of this Agreement.

2. Payment. Upon execution of this Agreement, Company shall pay to Plaintiffs the sum of \$60,000 (the "Settlement Amount") by cashier's check or other certified funds made payable to "Cowan, DeBaets, Abrahams & Sheppard LLP, In Trust For Costume Litigation", to be delivered to the following address:



IN WITNESS WHEREOF, Plaintiff and Company have executed this Agreement effective this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

PARTY ART PRODUCTIONS, INC.

HIT ENTERTAINMENT, INC.

By \_\_\_\_\_

By \_\_\_\_\_

Printed Name

Its \_\_\_\_\_

Its \_\_\_\_\_

Signature

Signature

Phillip Herman

SCHOLASTIC INC.

By \_\_\_\_\_

Roberta Herman

Its \_\_\_\_\_

Signature

IN WITNESS WHEREOF, Plaintiff and Company have executed this Agreement  
effective this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

PARTY ART PRODUCTIONS, INC.

HIT ENTERTAINMENT, INC.

By \_\_\_\_\_

By \_\_\_\_\_

Printed Name

Its \_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Phillip Herman

SCHOLASTIC INC.

By \_\_\_\_\_

\_\_\_\_\_  
Roberta Herman

Its \_\_\_\_\_

\_\_\_\_\_  
Signature



8. **Company's Release.** Company, on behalf of itself, its partners, representatives, agents, attorneys, employees, successors, affiliates, employers, heirs and assigns, and each of them, hereby releases and forever discharges Plaintiffs and their past, present and future officers, directors, employees, employers, attorneys, partners, agents, heirs, beneficiaries, subsidiary, successor or predecessor corporations or partnerships, their affiliates, their assigns, and each of them, of and from any and all claims, demands, allegations, obligations, costs, damages, fees or causes of action of any nature whatsoever relating to the purchases of Allegedly Infringing Costumes from any source, through the date set forth below.

9. **Unknown Claims.** Plaintiffs and Company expressly declare that they knowingly waive any and all rights they may have under the provisions of Section 1542 of the California Civil Code and any comparable federal or state statute or rule of law by releasing all claims, known or unknown, except as otherwise expressly provided herein. Section 1542 of the California Civil Code provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

10. **Attorneys' Fees and Costs.** In the event it is necessary for Plaintiffs to take action to enforce the terms of this Agreement, Company agrees that, in addition to any actual damages incurred, they shall recover from Company the costs and expenses, including reasonable attorneys fees, incurred in connection with such action.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with reference to the subject matter contained herein, and all prior negotiations and understandings between the parties are merged into this Agreement.

12. **Modification or Amendments.** This Agreement may not be altered, modified, amended or changed in any respect or particular whatsoever, except by a writing duly executed by the parties hereto.

13. **Interpretation of Agreement.** The validity, interpretation and performance of this Agreement shall be controlled by, and construed under the laws of the State of New York, excluding any body of law governing conflicts of law.

14. **Sovereignty.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable for any reason whatsoever, the remaining provisions hereof shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

15. **No Waiver.** The waiver by any party of the performance of any covenant, condition, promise or representation shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, promise or representation.

16. Additional Performance. The parties agree to execute and deliver such other and further documents and to perform such other acts as shall be reasonably necessary to effectuate the purposes of this Agreement.



STEP 4

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is made and entered into effective as of the date last set forth below, by and between EMT Entertainment, Inc., Scholastic Inc. and Party Art Productions, Inc., and Phillip Herman and Roberta Herman ("Plaintiffs"),

WHEREAS, Plaintiffs are the owners and exclusive licensees of various copyright and trademark registrations and other intellectual property rights pertaining to Bob the Builder and Clifford the Big Red Dog children's characters (hereinafter "the Protected Characters"); and

WHEREAS, Company has a place of business at 51 Brandt Road, Hillburn, NY 10931;

WHEREAS, Company has purchased costumes which allegedly infringe Plaintiffs' rights in the Protected Characters (the "Allegedly Infringing Costumes") and has resold, rented, or otherwise provided services making use of the Allegedly Infringing Costumes;

WHEREAS, Plaintiffs have made known to Company their intent to file a trademark and copyright infringement suit against Company in a United States District Court, relating to its purchases and sales, rentals or other uses of the Allegedly Infringing Costumes;

WHEREAS, Company has made certain representations to Plaintiffs, including an accounting of all Allegedly Infringing Costumes purchased by Company from any source;

WHEREAS, Company has surrendered to Plaintiffs all Allegedly Infringing Costumes and costumes which Plaintiffs have informed Company allegedly infringe the rights of Plaintiffs in the Protected Characters; and

WHEREAS, Plaintiffs and Company desire to settle the controversies between them without the expense or inconvenience of litigation.

NOW, THEREFORE, in consideration of these premises, and the conditions, covenants and promises set forth herein, Plaintiffs and Company hereby agree as follows:

1. Inducement to Settle. Company represents that the information it has provided to Plaintiffs in the Questionnaire provided to it by Plaintiffs is, and all representations made by it to Plaintiffs are, accurate and complete to the best of its knowledge following reasonable inquiry. Company acknowledges and agrees that such information and representations are a material part of the inducement to Plaintiffs to enter into this Agreement and that any false or misleading representations or information shall constitute a material breach of this Agreement.

2. Payment. Upon execution of this Agreement, Company shall pay to Plaintiffs the sum of \$60,000 (the "Settlement Amount") by cashier's check or other certified funds made payable to "Cowan, DeBatts, Abrahams & Sheppard LLP, In Trust For Costume Litigation", to be delivered to the following address:

(A056273.DOC/2)



Cowan, DeBaets, Abrahams & Sheppard LLP  
Attn: Costume Litigation  
41 Madison Avenue, 34th Floor  
New York, New York 10010

3. **No Other Sums.** No other or additional sums of any kind or amount, including but not limited to, damages, attorneys' fees, costs, expert witness fees, expert consultant fees, investigation costs or fees are owed to Plaintiffs by Company or to Company by Plaintiffs.

4. **Cooperation.** Company shall cooperate in good faith with Plaintiffs in connection with any investigation of or litigation regarding possible infringing activities of other individuals and entities, including, but not limited to, consulting with Plaintiffs' counsel or investigators and appearing for deposition or trial testimony on reasonable notice without subpoena.

5. **Notice of Contact.** Company shall notify Plaintiffs of the fact and content of any conversation, contact, or other communication Company may receive concerning the possible sale, production, distribution or importation of merchandise which might infringe Plaintiffs' trademark and copyright rights. This notice, and the notice required by Paragraph 6 of this Settlement Agreement, should be made to:

Cowan, DeBaets, Abrahams & Sheppard LLP  
Costume Litigation  
41 Madison Avenue, 34th Floor  
New York, New York 10010

6. **Agreement Not to Infringe.** Company agrees to refrain from the purchase, manufacture, distribution, sale, rental and/or use of any costumes or other items which bear the likeness of the Protected Characters or a confusingly similar likeness, and shall notify Plaintiffs if requested by any person or entity to engage in any such activity at any time in the future.

7. **Plaintiffs' Release.** For and in consideration of the terms and conditions hereof, including, without limitation Company's ongoing cooperation with Plaintiffs as set forth above, and full payment to Plaintiffs as provided above, Plaintiffs, on behalf of themselves, their partners, representatives, agents, attorneys, employees, successors, affiliates, employers, heirs and assigns, and each of them, hereby releases and forever discharges Company, and its past, present and future officers, directors, employees, employers, attorneys, partners, agents, heirs, beneficiaries, subsidiary, successor or predecessor corporations or partnerships, their assigns, and each of them, of and from any and all claims, demands, allegations, obligations, costs, damages, fees or causes of action of any nature whatsoever, relating to Company's purchase and resale, rental or use of the Allegedly Infringing Costumes, through the date set forth below, but only to the extent of Company's representations and warranties set forth herein. This release does not extend to any customer or supplier of Company, or any officers, directors, or shareholders thereof.



**STEP 3 - QUESTIONNAIRE PAGE B**

Copy and complete this page for each costume purchased.

The look-alike costume described here is:	Barney	Clifford the Big Red Dog	Bob the Builder
	Baby Bop	Thomas the Tank Engine	Thomas Conductor
<b>CHECK ONE</b>	BJ		

1. Purchased from: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Date of purchase: \_\_\_\_\_ Purchase price: \_\_\_\_\_

2. How frequently was the costume rented? \_\_\_\_\_

(For example, "seven times a week")

What was the rental price? \_\_\_\_\_

(For example, "\$175.00 per hour, \$850.00 per day")

3. How frequently did you provide entertainment services to children using the costume?

\_\_\_\_\_  
(For example, "ten times a week, but twenty times a week during the summer")

What was the price for those services? \_\_\_\_\_

(For example, "\$650.00 per appearance")

4. Did you sell the costume? \_\_\_\_\_

If so, date of sale: \_\_\_\_\_ Sale price: \_\_\_\_\_

Name of purchaser: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

If you have not provided information about resale of this costume, you must ship the costume to

Cowan, DeBaets, Abrahams & Sheppard LLP as indicated at Step 1 of the "Instructions for Settlement" or explain here why you cannot ship this costume: \_\_\_\_\_

**PROCEED TO STEP 4**



STEP 3 - QUESTIONNAIRE PAGE A

Complete both parts of this Questionnaire. The Release and Settlement Agreement is effective only to the extent that you provide accurate and complete information.

How many "Barney" look-alike costumes have you purchased? \_\_\_\_\_

How many "Baby Bop" look-alike costumes have you purchased? \_\_\_\_\_

How many "BJ" look-alike costumes have you purchased? \_\_\_\_\_

How many "Bob the Builder" look-alike costumes have you purchased? \_\_\_\_\_

How many "Clifford the Big Red Dog" look-alike costumes have you purchased? \_\_\_\_\_

How many "Thomas the Tank Engine" look-alike costumes have you purchased? \_\_\_\_\_

How many "Thomas Conductor" look-alike costumes have you purchased? \_\_\_\_\_

Make one copy of Questionnaire Page B for each look-alike costume you have purchased, and provide all information requested. Return this Page A and each copy of Page B, together with your check for the settlement amount (payable to "Cowan, DeBaets, Abrahams & Sheppard LLP, In Trust For Costume Litigation"), and two signed copies of the Settlement Agreement in the enclosed pre-addressed envelope to:

Cowan, DeBaets, Abrahams & Sheppard LLP  
Attn: Costume Litigation  
41 Madison Avenue, 34th Floor  
New York, New York 10010

This Questionnaire was completed by \_\_\_\_\_

Full name (print or type)

Position (print or type)

For:  
Party Art Productions  
51 Brandt Road  
Hilburn, NY 10931

If you have any questions, you may call Cowan, DeBaets, Abrahams & Sheppard LLP  
at (212) 497-0997.

STEP 3 CONTINUES ON THE NEXT PAGE